

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LOTUS INDUSTRIES, LLC,
et al.,

Plaintiffs,

v.

DENNIS ARCHER, Jr., et al.

Defendants.

Case No. 2:17-cv-13482
District Judge Sean F. Cox
Magistrate Judge Anthony P. Patti

**ORDER GRANTING AS UNOPPOSED DEFENDANT DENNIS ARCHER,
JR.'S MOTION FOR PROTECTIVE ORDER UNDER FED. R. CIV. P.
26(c)(1) (DE 81) AND CANCELLING HEARING NOTICED FOR
NOVEMBER 7, 2018 (DE 83)**

Currently before the Court is Defendant Dennis Archer, Jr.'s September 27, 2018 motion for protective order under Fed. R. Civ. P. 26(c)(1), which has been referred to me, and Defendant Archer, Jr.'s supplemental brief in support of his motion. (DEs 81, 82, 86.) This motion initially was set for hearing on November 7, 2018 at 10:00 a.m. (DE 83.) However, pursuant to E.D Mich. LR 7.1(f)(2), this motion will be determined without oral argument. (DE 87.)

According to the motion and supplemental brief, which are supported by attached exhibits, "Plaintiff and his counsel's continued, bad faith, abuse of the discovery process necessitates issuance of a protective order." (DEs 81, 86.) Defendant contends that Plaintiff is engaged in a fishing expedition to "try[] to

circumvent court-imposed deadlines and use discovery here to bolster its other lawsuits (of which there are many) against various local officials; dig[] into the already dismissed baseless civil RICO claims; or simply continu[e][] to engage in his smear campaign against the personal and professional reputation of Mr. Archer.” (DE 81 at 20.)¹ Defendant seeks a protective order:

- a. Limiting the scope of discovery to information relevant to the remaining claim and defenses thereto at issue in this lawsuit;
- b. Limiting use and disclosure of discovery materials, including deposition testimony, to the above-captioned action;
- c. Precluding Mr. Robert Davis from attending any depositions; and
- d. Requiring that the Parties obtain the concurrence of the Court prior to filing any discovery motion.

(DE 81 at 2.)

Defendant Archer, Jr. filed the instant motion for protective order on September 27, 2018. (DE 81.) “A response to a nondispositive motion must be filed within 14 days after service of the motion.” E.D. Mich. LR 7.1(e)(2)(B). Thus, in the absence of a scheduling order stating otherwise, Plaintiffs’ response to

¹ The Court notes that Plaintiffs and their counsel have been found to have engaged in “repeated discovery abuses” and contumacious conduct sufficient to warrant dismissal of Plaintiffs’ claims in another case in this District, including “repeated misrepresentations ... [and] failure to comply with discovery orders” and “fail[ure] to follow the Federal Rules on several occasions.” *See Williams v. City of Detroit*, No. 2:16-cv-14112 (E.D. Mich. Oct. 9, 2018) (Michelson, J.) (DE 201).

Defendant's September 27, 2018 motion (DE 81) would have been due on October 11, 2018. *See* Fed. R. Civ. P. 6(a), 6(d). To date, Plaintiffs have not responded to Defendant's motion.

The local court rules of the Eastern District of Michigan required Plaintiffs to file a response if they wished to oppose Defendant Archer, Jr.'s motion for protective order. *See* E.D. Mich. LR 7.1(c)(1) ("A respondent opposing a motion must file a response, including a brief and supporting documents then available.") (emphasis added). Opposition to a motion is deemed waived if the responding party fails to respond or otherwise oppose the motion. *See Humphrey v. United State Attorney General's Office*, 279 F. App'x 328, 331 (6th Cir. 2008). Because Plaintiffs have not responded to Defendant Archer Jr.'s motion for protective order, Defendant's motion can and will be construed as unopposed.

Accordingly, Defendant Archer Jr.'s motion for protective order under Fed. R. Civ. P. 26(c)(1) is **GRANTED as unopposed** as follows:

1. The scope of discovery is limited to information relevant to the remaining claim and defenses thereto at issue in this lawsuit;
2. The use and disclosure of discovery materials, including deposition testimony, is limited to this lawsuit;
3. Mr. Robert Davis is precluded from attending any depositions in this lawsuit; and
4. The Parties are required to obtain the concurrence of the Court prior to filing any discovery motion. If a party believes it is necessary to

file a motion, that party must file a letter addressed to the Court, of no more than one page, outlining the dispute and the attempts to resolve it. Opposing counsel may file a response to the letter within four (4) days, of no more than one page.

In addition, the hearing noticed for November 7, 2018 (DE 83) is

CANCELLED.

IT IS SO ORDERED.

Dated: November 6, 2018

s/*Anthony P. Patti*

Anthony P. Patti
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I hereby certify on November 6, 2018, I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to non-registered ECF participants on November 6, 2018.

s/Carolyn Ciesla

Case Manager Acting in
the Absence of Michael Williams